



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-177528

January 18, 1973

30443

099486

Dear Mr. Secretary:

Reference is made to your letter dated November 24, 1972, with enclosures, requesting our opinion as to the proper construction and interpretation to be given to an indenture dated September 4, 1969, executed between the General Services Administration, acting on behalf of the United States, and the Joint Board of Texarkana Airport Authority (Joint Board), by which certain leased property at the Texarkana Municipal Airport, together with certain Government-owned improvements thereon, were transferred to the Joint Board.

Paragraph 6F of the indenture provides:

"F. That the grantee will make available all facilities of the airport at which the property described herein is located or developed with Federal aid and all those usable for the landing and taking off of aircraft to the United States at all times, without charge, for use by aircraft of any Agency of the United States in common with other aircraft, except that if the use by aircraft of any Agency of the United States in common with other aircraft, is substantial, a reasonable share, proportional to such use, of the cost of operating and maintaining facilities so used, may be charged; and unless otherwise determined by the FAA, or otherwise agreed to by the grantee and the using Federal Agency, substantial use of an airport by United States aircraft will be considered to exist when operations of such aircraft are excess of those which, in the opinion of the FAA, would unduly interfere with use of the landing area by other authorized aircraft or during any calendar month that (1) either five 5 or more aircraft of any Agency of the United States are regularly based at the airport or on land adjacent thereto, or (2) the total number of movements (counting each landing as a movement and each take-off as a movement) of aircraft of any Agency of the

B-177528

United States is 300 or more, or (3) the gross accumulative weight of aircraft of any Agency of the United States using the airport (the total movements of such Federal aircraft multiplied by gross certified weights thereof) is in excess of five million pounds."

It is reported that from 1970 until June of 1972, United States Air Force C-141 cargo planes, carrying Army material destined for or shipped from the Red River Army Depot, landed and took off from the Texarkana Municipal Airport. As a consequence of the great weight of these airplanes, (257,500 pounds, as compared to an average weight of 58,300 pounds for commercial flights) portions of the taxiway and of the runway of the airport were seriously damaged. Also, since the gross accumulative weight of such landings had increased from approximately 7 million pounds in April 1971 to 13 million pounds in April 1972, the FAA determined on May 15, 1972, that "substantial use," as defined in paragraph 6F quoted above, was being made of the airport facilities by United States aircraft and that the parties should proceed to negotiate a reasonable use and maintenance charge.

Pursuant to paragraph 6B(1) of the indenture, which authorizes the Joint Board to prohibit any type or class of aeronautical use of the airport if such action is necessary for the safe operation of the facilities, the Joint Board has suspended further military flights into the airport until such time as the runway is again in a safe operative condition.

You indicate that in the interest of national defense your Department desires to again have full access to the airport for the carriage of cargo to the Red River Depot, and to accomplish this purpose you wish to negotiate a reasonable use and maintenance charge with the Joint Board. You advise of your intention to pay for a proportionate amount for the ordinary annual operating expenses of \$295,786 (i.e., \$55,608 or 18.8 percent computed on the ratio of the total gross landing weight of Army planes to the total gross landing weight of all planes). However, you seek our advice as to whether you may pay approximately \$244,392 (74 percent) of the extraordinary maintenance costs of approximately \$330,000, since it is your belief that substantially all of such abnormal maintenance burden has been engendered as a result of the Government's use of, and resulting damage to, the runway. Your request for our opinion is made for the stated reason that there is no objective standard provided, in either the indenture or the statute (50 App. U.S.C. 1622) under which the

indenture was executed, for giving a concrete meaning to the phrase "reasonable share, proportional to such use, of the cost of operating and maintaining facilities so used" in the indenture, or to the phrase "reasonable share of the cost of maintaining and operating the landing area, commensurate with the use made by it," which appears in the statute.

We believe your question may properly be answered in the light of the intent of the parties in executing the indenture, and by giving the ordinary meaning to the language quoted above.

These considerations are significant, we think, in showing that the parties in the use of the word "maintaining" did not intend it in a narrow sense, but rather that it should be liberally construed so as to include any extraordinary maintenance caused by a disproportionate use of the facilities, such as was caused in this instance by the great weight of the Government's airplanes. In this connection, we note that maintain is defined as the up-keep or preserving of the condition of property to be operated. Black's Law Dictionary, 4th Ed.

In Concordia - Arrow Flying Service Corporation v. City of Concordia,
289 P. 955 (S. Ct. Kans. 1930), it was stated at page 957:

"To maintain an airport is to keep it in a state of efficiency for the furnishing of those facilities and the rendition of those services which air transportation and communication demand."

We believe it is apparent that considerable more wear and tear results to a runway from one landing of a C-141 cargo plane than results from five landings of planes weighing only one-fifth as much as a C-141. We are therefore in agreement with your position that a reasonable share of the extraordinary maintenance costs, proportionate to the Government's use of the airport, cannot properly be computed in the same manner as its share of the operating expenses. Accordingly, since it is your belief that substantially all of the damage to the runways is attributable to Government planes, and since we understand that it is impossible to establish the extent of such damage with any

B-177528

degree of exactitude, we will interpose no objection to the negotiation of use and maintenance charges with the Joint Board as outlined in your letter.

Sincerely yours,

(SIGNED) ELMER B. STAATS

Comptroller General
of the United States

The Honorable
The Secretary of the Army